

SENATE BILL 2668

By Kyle

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 14, Part 1, relative to the counterfeiting of intellectual property.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 14, Part 1, is amended by adding the following as a new section:

Section 39-14-1__.

(a) As used in this section:

(1) "Counterfeit mark" means:

(A) any knowingly unauthorized reproduction or copy of intellectual property; or

(B) intellectual property affixed to any item knowingly sold, offered for sale, manufactured, or distributed, or identifying services offered or rendered, without the authority of the owner of the intellectual property.

(2) "Intellectual property" means any trademark, service mark, trade name, label, term, device, design or word adopted or used by a person to identify such person's goods or services.

(3) "Retail value" means the counterfeiter's regular selling price for the item or service bearing or identified by the counterfeit mark. In the case of items bearing a counterfeit mark which are components of a finished product, the retail value shall be the counterfeiter's regular selling price of the finished product on or in which the component would be utilized.

(b)

(1) It is an offense for a person to knowingly manufacture any item or services bearing or identified by a counterfeit mark.

(2) It is an offense for a person to use, display, advertise, distribute, offer for sale, sell, or possess with the intent to sell or distribute any item or services knowing such item or services bears or is identified by a counterfeit mark.

(c) In determining whether a person who possesses an item bearing or identified by a counterfeit mark possesses such item with the intent to sell or distribute it in violation of subsection (b)(2), the trier of fact may infer from the possession, custody or control of more than twenty-five (25) items bearing a counterfeit mark that such person possesses the items with the intent to sell or distribute them.

(d)

(1) A violation of subsection (b)(1) is a Class C felony. In addition to the punishment for a Class C felony, any person violating this subsection shall be fined an amount up to three (3) times the retail value of the items bearing, or services identified by, a counterfeit mark.

(2) A violation of subsection (b)(2) shall be punished as theft and graded in accordance with § 39-14-105 provided all such violations of (b)(2) shall be punished by fine only.

(e) For purposes of determining the appropriate offense grade for a defendant violating subsection (b)(2), the quantity or retail value of all items bearing, or services identified by, every counterfeit mark the defendant used, displayed, advertised, distributed, offered for sale, sold or possessed with the intent to sell or distribute at the time of the offense shall be aggregated.

(f) All personal property, including but not limited to, any items bearing a counterfeit mark, or any items, objects, tools, machines, equipment, instrumentalities or vehicles of any kind, employed or used in connection with a violation of this section shall be subject to judicial forfeiture pursuant to Title 39, Chapter 11, Part 7. If the intellectual property owner does not request release of seized items bearing a counterfeit mark, such items shall be destroyed unless the intellectual property owner consents to another disposition.

(g) Nothing in this section shall be construed as prohibiting an owner of intellectual property from seeking relief under any other provision of law, including the provisions of Tennessee Code Annotated, Title 47, Chapter 25, Part 5. Provided, however, a defendant prosecuted under this section may not also be prosecuted for criminal simulation under § 39-14-115 based upon the same conduct.

SECTION 2. This act shall take effect July 1, 2000, the public welfare requiring it.